

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ANGEL CONCEPCION-VASQUEZ,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Civ. No. 16-4967 (KM)

ANGEL CONCEPCION-VASQUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civ. No. 16-5904 (KM)

MEMORANDUM AND ORDER

Pro se petitioner, Angel Concepcion-Vasquez, is proceeding with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. This Court initially received petitioner's § 2255 motion in August, 2016 and it was docketed at Civ. No. 16-4967. That case was administratively terminated on August 23, 2016 as petitioner had failed to file his § 2255 motion on the proper form. Petitioner was given leave to file his § 2255 motion on the proper form within thirty days.

On September 23, 2016, this Court received another motion to vacate, set aside or correct a sentence pursuant to § 2255 from petitioner. That case, however, was given a new docket number at Civ. No. 16-5904. Because petitioner's new § 2255 motion is for the same judgment and conviction that he challenged in Civ. No. 16-4967, the Clerk will be ordered to refile

petitioner's § 2255 motion in 16-5904 as a § 2255 motion in the earlier-filed 16-4967.

Accordingly, the Clerk will be ordered to close Civ. No. 16-5904 and reopen Civ. No. 16-4967, and petitioner's new § 2255 motion will be analyzed under Civ. No. 16-4967.

Local Civil Rule 81.2 provides:

Unless prepared by counsel, . . . motions under 28 U.S.C. §2255 shall be in writing (legibly handwritten in ink or typewritten), signed by the petitioner or movant, on forms supplied by the Clerk.

L.Civ.R. 81.2(a). Petitioner did not use the updated habeas form supplied by the Clerk for section 2255 motions, *i.e.*, AO243 (modified): DNJ-Habeas-004 (Rev. 01-2014). Furthermore, Federal Rule of Civil Procedure 11(a) requires that petitioner sign his § 2255 motion, but petitioner's signature is missing. (*See* Civ. No. 16-5904, Dkt. No. 1 at p.14)

Accordingly, IT IS this 29th day of September, 2016,

ORDERED that the Clerk shall file petitioner's § 2255 motion in Civ. No. 16-5904 (Dkt. No. 1) as a § 2255 motion in Civ. No. 16-4967; and it is further

ORDERED that the Clerk shall close Civ. No. 16-5904 as petitioner's § 2255 motion in that case will be analyzed in Civ. No. 16-4967; and it is further

ORDERED that the Clerk shall reopen Civ. No. 16-4967; and it is further

ORDERED that the Clerk shall again administratively terminate Civ. No. 16-4967 as petitioner has not filed his § 2255 motion on the proper form and it is not signed; petitioner is informed that administrative termination is not a "dismissal" for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely, *see Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) (distinguishing administrative terminations from dismissals); *Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (3d Cir. 2013) (describing prisoner

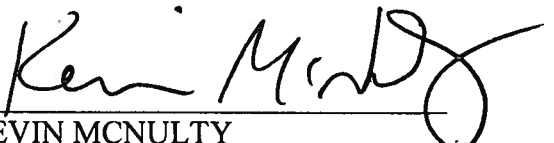
mailbox rule generally); *Dasilva v. Sheriff's Dep't.*, 413 F. App'x 498, 502 (3rd Cir. 2011) (“[The] statute of limitations is met when a [motion] is submitted to the clerk before the statute runs”); and it is further

ORDERED that the Clerk's service of the blank section 2255 form shall not be construed as this Court's finding that the motion is or is not timely, or that Petitioner's claims are or are not procedurally defaulted; and it is further

ORDERED that if petitioner wishes to reopen this case, he shall so notify the Court, in a writing addressed to the Clerk of the Court, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, within thirty (30) days of the date of entry of this Memorandum and Order; petitioner's writing shall include a complete, signed habeas petition on the appropriate updated form supplied by the Clerk that includes the proper Civil Action No. 16-4967; and it is further

ORDERED that upon receipt of a writing from petitioner stating that he wishes to reopen Civ. No. 16-4967, and a complete, signed petition, the Clerk of the Court will be directed to reopen this case; and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Memorandum and Order and a blank section 2255 form - AO243 (modified): DNJ-Habeas-004 (Rev. 01-2014) upon petitioner by regular U.S. mail.



KEVIN MCNULTY
United States District Judge